96-133

REINSTATEMENT OF OIL AND GAS LEASE NEW MEXICO 33955

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2279

A BILL TO AUTHORIZE AND DIRECT THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE NEW MEXICO 33955

AUGUST 5, 1980

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REINSTATEMENT OF OIL AND GAS LEASE NEW MEXICO 33955

TUESDAY, AUGUST 5, 5980

U.S. SENATE,
SUBCOMMITTEE ON ENERGY RESOURCES
AND MATERIALS PRODUCTION,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in Room 6226, Dirksen Office Building, Hon. Wendell H. Ford, presiding.

Present: Senators Ford and Domenici.

Also present: Thomas L. Laughlin, professional staff member.

OPENING STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator FORD. This morning the Subcommittee on Energy Resources and Materials Production will consider S. 2279, a bill introduced by my colleague, Senator Domenici, who is with us today, to authorize the reinstatement of oil and gas lease numbered New Mexico 33955.

This bill will direct the Secretary—and I underscore the word "direct"—of the Interior to receive, consider and act upon any petition for the reinstatement of the terminated lease that is filed by the lessee of record within 90 days after enactment.

Under current law, the Secretary has no authority to reinstate a lease which has automatically terminated unless the rental due has been tendered within 20 days of the due date.

I will place in the record the text of S. 2279 and the Department of the Interior report.

[*The material referred to follows:*]

96TH CONGRESS
2D SESSION

S. 2279

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 3), 1980

Mr. DOMENICI (for himself and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to receive, consider, and act upon any petition of David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, for reinstatement of said lease filed within ninety days after the effective day of this Act, together with the

required rental, if any, including back rental accruing from the date of the termination of the lease.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable Henry M. Jackson
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20515

JUN 27 1980

Dear Mr. Chairman:

Your Committee has requested the views of this Department on S.2279, a bill "To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955."

We recommend that the bill not be enacted.

S. 2279 would direct the Secretary of the Interior to receive, consider and act upon any petition for the reinstatement of terminated oil and gas lease New Mexico 33955 filed by the lessee of record, David Fasken, within 90 days after the effective day of the bill, together with the required rental.

We oppose enactment of S. 2279 because the facts do not reveal any special circumstances which warrant special legislative relief or a waiver of a provision of the Mineral Leasing Act, as amended (30 U.S.C. 181).

Section 31 of the Mineral Leasing Act, as amended (30 U.S.C. 188) provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law . . .". It further provides that where any lease has been so terminated automatically by operation of law, but rental was paid or tendered within 20 days after the anniversary date and it is shown to the satisfaction of the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met.

Under the present law, the Secretary has no authority to reinstate a lease which has automatically terminated unless the rental is tendered within 20 days of the due date.

These are the pertinent facts of this case:

1. Oil and gas lease NM 33955 was issued, through the simultaneous drawing procedures, effective September 1, 1978, to Peggy E. Baetz, for a period of ten years and so long thereafter as oil or

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gas is produced in paying quantities. The lease contained 1,280.00 acres. Through the routine updating and geologic review procedures of the United States Geological Survey, part of the lands in the lease were included within an undefined (unnamed) addition which joins the South Salt Lake and Halfway Known Geologic Structures effective January 19, 1979. In the light of this, the New Mexico office of the Bureau of Land Management rendered a decision of February 8, 1979, notifying the lessee that the annual rental for the next year would be payable at the rate of $2.00 per acre or fraction thereof.

2. By assignment approved effective May 1, 1979, record title was conveyed to David Fasken. The records show that the assignee knew that the rental for the second lease year was due on September 4, 1979, in the amount of $2,560. A reminder notice to this effect was, sent to the assignee. On August 10, 1979, the BLM received a payment of $1,280. A receipt for this payment that showed both the full amount due and the amount paid was sent to the lessee with the notation "UNDER PAYMENT $1,280.00 UNLESS OTHER ACTION IS PENDING OR THE BALANCE DUE IS PAID BY THE DUE DATE THIS LEASE MAY BE TERMINATED."

3. Unless production had been obtained prior to September 4, 1979, the total annual rental was due on September 4,1979. Our records do not show production on that date. Therefore, full rental payment was due on that date.

4. The balance of the rental, $1,280 was not paid until December 18, 1979, when it was paid by the attorneys for the lessee.

5. The Department's regulations provide at 43 CFR 3108.2-1(b) that a lease is not automatically terminated if rental payment due under a lease is paid timely but is deficient and the deficiency is "nominal". "Nominal" is defined as not more than $10 or 5 percent of the total due. The deficiency in this case was not nominal.

6. Because only half the payment had been made, the New Mexico office issued a decision on December 20, 1979, that the lease had terminated by operation of law on September 4, 1979. The decision has been appealed to the Interior Board of Land Appeals. A decision is expected shortly.

7. The Secretary has no power to grant the reinstatement in this case because more than 20 days elapsed between the date payment was due and the date on which the full rental payment was tendered.

If this legislation were to be enacted and the Secretary were to consider a petition for reinstatement, the bases for granting it would be those presently provided in the law, i.e., failure to pay timely was either justifiable or not due to a lack of reasonable diligence.

We find that neither of those criteria are met in this case. The beneficiary of the bill was given ample notice that the rental payment had increased. As a matter of fact, he acknowledged to the IBLA that he had no explanation as to why the total rental payment was not made at the time the partial payment was made. He waited more than three months after the due date to tender the payment of the balance due - one-half of the total rental. To enact this legislation would give the beneficiary of the bill a false hope that relief would be granted and the lease reinstated.

We find no justification for special relief in this case. To grant this individual relief denied to all others with similar history would give him an unfair advantage that was not intended by the Mineral Leasing Act. Thousands of oil and gas leases have been terminated for non-payment of rental under the provisions of section 31 of the Mineral Leasing Act, as amended (30 U.S.C. 188). If this relief is granted it would be unwarranted and would have a disruptive effect on all past decisions. If Congress wishes to relax the provisions of the law, it should do so by general legislation applicable to all persons and not for the benefit of just one individual.

There is an inconsistency between the caption and the text of the bill. Although the caption states that it would direct the Secretary to reinstate the lease, the bill would only direct receipt and consideration of a petition for reinstatement. Although the caption has no legal effect, this inconsistency may cause confusion as to the actual intent of Congress.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Assistant SECRETARY

68-175 O—80——2

Senator FORD. Our witness this morning is the Associate Director of the Bureau of Land Management, Mr. Edward L. Hastey, who will review the factual background of this lease and the events which led to its termination.

Senator Domenici, do you have any remarks you would like to make this morning?

Senator DOMENICI. No, Mr. Chairman, other than to say that I introduced this bill on behalf of myself and Senator Schmitt.

It has a counterpart in the House, H.R. 6538, which I understand has been reported out to committee and is pending. It is on the Private Calendar in the House.

I have a detailed statement explaining the background. I would make it a part of the record, and merely indicate in general terms that this is a unique situation, basically, which has had about $1,900,000 invested to this point, and there is no authority in the Secretary to do anything about the equity of this situation which could prove to be, if this bill is not passed, quite devastating.

That's all I have, Mr. Chairman.

[The prepared statement of Senator Domenici follows:]

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

United States of America Oil and Gas Lease NM 33955 was issued September 1, 1978, to Peggy E. Baetz for a period of 10 years and so long as oil and gas is produced in paying quantities. The lease covered all of Sections 22 and 23, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, and contained 1,280 acres. The first year's lease rental of $1 per acre ($1,280) was paid to the New Mexico Bureau of Land Mangement prior to issuance of the lease.

A portion of the lands within the lease were subsequently declared to be within the boundaries of a known geologic structure, which declaration, by operation of law, caused annual lease rentals to increase from $1 per acre ($1,280) to $2 per acre ($2,560), payable on or before September 1, 1979.

On March 28, 1979, David Fasken, through his General Manager, Richard S. Brooks, purchased Lease NM 33955 and two other federal leases, as follows:

(1) Lease NM 33955 from Peggy E. Baetz for a cash consideration of $256,000, a retained 7.5 percent overriding royalty by Baetz, and a conditional obligation to drill a well on the Baetz lease on or before December 31, 1979, to a depth of approximately 13,600 feet subsurface. The obligation to the Baetzes to drill the well by December 31, 1979, could be deferred, however, by payment to them of a type of delay rental of $1,280 per month.

(2) Lease NM 16440-B from Southwest Resources, Inc., for a cash consideration of $56,000, a retained 7.5 percent overriding royalty interest, and a conditional drilling obligation.

(3) Lease NM 25878 from Howard G. Nichols, for a cash consideration of $16,000, retained overriding royalty interest of 7.5 percent, and a conditional drilling obligation.

The purchase also involved the payment of a cash consideration of $80,000 to other individuals who held options on the leases.

On August 3, 1979, David Fasken commenced the drilling of a well in Section 23, on the Baetz lease, and drilled the well to the Morrow formation at approximately 13,640 feet subsurface. The Morrow formation was found to be nonproductive, and the well was plugged back and completed as an oil well from perforations in the Bone Spring formation at approximately 10,288 feet, with the well being potentialed for 163 barrels of oil and 187 MCF of gas per day on November 13, 1979.

Through January 20, 1980, Mr. Fasken and other individuals participating with him in drilling of the well, have expended the sum of $1,442,685.48 in drilling and completing the well. Total project expenditure to date, including lease acquisition expense and drilling expense, is $1,850,685.48.

After obtaining the Baetz assignment of Lease NM 33955, the David Fasken record in the offices of his General Manager, Richard S. Brooks, were set up to reflect the need for payment of the second year's lease rental on or before September 1, 1979, and the records reflected the increased rental amount of $2 per acre, necessitating a total lease rental payment of $2,560 to be paid on or before Septem-

ber 1, 1979. On or about July 3, 1979, a rental check and rental transmittal letter were prepared and placed in a follow-up file for payment of rental on NM 33955 on or about August 6, 1979. Normal procedure would have called for preparation of the rental check and rental transmittal letter to have been based upon lease abstract information in the lease file. In the present instance, however, the check and letter prepared reflected a $1 per acre rental, or $1,280, as was originally required under the lease, rather than $2,560, which was the increased amount of the rental. The $1,280 rental payment was received in the New Mexico Bureau of Land Management Office on August 10, 1979. After completion of the well on the Baetz lease, preparations were made for a division order title opinion. At that time it was discovered that rental of less than $2,560 had been tendered prior to the anniversary date of the lease. This matter was discovered on December 17, 1979, and it was not until that time that it was brought to the attention of David Fasken's office. On December 18, 1979, the balance due on the rental of $1,280 was tendered to and received by the New Mexico Bureau of Land Management Office. However, under provisions of Public Law 555, 83rd Congress (30 U.S.C. 188), the lease terminated on September 4, 1979, as a matter of law. By the time the incorrect lease rental payment was discovered by David Fasken's office, there also existed no opportunity under the Code of Federal Regulations for David Fasken to apply administratively for reinstatement of the lease.

The reason for the mistake in the rental payment is unknown. Possibly the same resulted from an office misinterpretation of the conditional delay rentals of $1,280 payable to Baetz, or possibly the same resulted simply from the Fasken office staff taking the rental payment amount due directly from the lease instrument itself rather than from the lease abstract in the lease file. In any event, as a result of inadvertence, oversight and/or clerical mistake, the rental was not paid in the correct amount, and a Decision was issued December 20, 1979, by the New Mexico Bureau of Land Management Office advising that Lease NM 33955 terminated as a matter of law.

David Fasken and the other investing participants in the well and leases are independent oil and gas operators and producers. Mr. Fasken operates 5 oil wells and 33 gas wells in New Mexico. He was one of the original drillers for Morrow gas production in Southeast New Mexico, and was one of the pioneers of a new technique for Morrow gas recovery, which opened the door to production from that formation. Morrow formation production is now one of the mainstays of present gas production and development in Southeast New Mexico.

Over the past three years of Mr. Fasken's operations, he has made payments to more than 90 New Mexico firms and individuals for goods and services provided to his well operations. He has contributed to the economic benefit of New Mexico and the nation by way of taxes and royalty paid and oil and gas produced. Mr. Fasken is a comparatively small independent producer, however, and the loss of investment and commitment made in the well and leases cannot be offset by other operations and activities. Loss of the lease will be a substantial and material economic detriment to him and to the other participants in the well. It is believed that an unconscionable and inequitable result would occur if this lease were not reinstated. It is further believed that David Fasken acted in good faith in attempting to pay the correct amount of rental, and that the failure was not due to a lack of reasonable diligence, but rather through inadvertence and mistake.

The request for a Private Bill of this nature is not without precedent.

In 1967, Senator Clinton P. Anderson introduced S. 823 in the United States Senate, being a Bill for the relief of Elwyn C. Hale. The bill sought to reinstate a terminated New Mexico federal oil and gas lease, which had been terminated by operation of law as a result of a rental not being timely paid. In that matter, a secretary to Mr. Hale had been negligent in failing to timely pay the rental. Mr. Hale had started a well upon the lands involved, but the same had not been completed and apparently there had been no shows of oil or gas. The well had been drilled to the depth of approximately 500 feet at a cost to Mr. Hale of only $9,000. The Senate Committee was convinced that the failure to pay the rental was an inadvertence and that Mr. Hale had acted in good faith. The bill was passed in July 1968 and signed by the President. In the Secretary's subsequent decision of lease reinstatement, the belief was stated that the lessee had acted in good faith and no without a lack of reasonable diligence.

On July 30, 1975, Senator Montoya and I introduced Senate Bill 2220 for the relief of Sol West, III, for reinstatement of a terminated oil and gas lease where rentals had not been timely paid. A similar bill was introduced in the House of Representatives by congressmen Runnels and Lujan. In that matter, rentals were due and payable on or before May 1, 1975, but were not paid, and it was not until late July 1975 that the mistake was discovered. In that situation, rentals had not been paid

upon a belief that a well had been completed upon the lands capable of producing in paying quantities, although such was not the case in the determination of the United States Geological Survey as of the date lease rentals were due. In the West matter, lease acquisition costs were approximately $20,000 and drilling costs approximately $920,000. The Private Bill for the relief of Sol West, III, was passed in Congress on or about September 21, 1976, and signed by the President October 4, 1976. A Petition for Reinstatement was subsequently filed with the Secretary of the Interior, and the lease was reinstated.

The Private Bill sought in this matter is substantially the same bill passed in the relief of Mr. Hale and Mr. West. The bill would not require the Secretary of Interior to reinstate the lease, but rather would require the secretary to consider and act on an appropriate petition for reinstatement. It is felt that it can be demonstrated to the Secretary of the Interior that the failure to make the rental payment was an inadvertent mistake, and not the result of a lack of good faith and reasonable diligence. The parties seeking the legislation are independent participants in the oil and gas industry who have a large investment in the lease. Engineering data indicates that the investing participants will be fortunate if lease production is adequate to return their investment. Production from the existing well will be somewhat of a salvage operation, to attempt to obtain the limited amount of oil in place; however, without lease reinstatement, the loss incurred by the partiticipants will be devastating.

Senator FORD. Mr. Hastey.

STATEMENT OF EDWARD L. HASTEY, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. HASTEY. Thank you very much, Mr. Chairman. I can summarize my remarks, if you would like.

Senator FORD. If you would summarize your remarks and whatever statement you have, we will enter it into the record.

Mr. HASTEY. Why don't I just give the background. I think the intent was fairly well summarized by you and the Senator.

I would just reemphasize what you mentioned that, under the law, the Secretary has no authority to reinstate the lease which has automatically terminated unless the rental payment is made within 20 days of the due date. That lease has terminated.

As Senator Domenici mentioned, this case may be unique, perhaps different from other leases that have been terminated because an intensive drilling program was conducted after September 4, 1979, although the lease had terminated by the operation of the law.

On November 13, 1979, the lessee completed exploration with an oil well into a formation of approximately 10,000 feet, and a potential for 163 barrels of oil and 187 Mcf of gas per day. And he has stated that the expenditure for the exploration was over $1.8 million.

If S. 2279 were to be enacted and the Secretary were to consider a petition for reinstatement, the bases for granting it would be those presently provided in the law—that is, failure to pay timely was either justifiable or not due to a lack of reasonable diligence.

Senator FORD. Did they amend the lease legislation that was introduced in committee to change that word "direct"?

Mr. HASTEY. The House Report I have, H.R. 6538, as amended, authorizes and directs the Secretary of the Interior to reinstate the oil and gas lease if the lessee filed a petition within 90 days after effective date of the legislation. In fact——

Senator FORD. Is that about the only addition in language between the Senate bill and the House bill?

Mr. HASTEY. That's right. The administration does not recommend any of these actions. However, because of the size of the investment and the discovery made in the case covered by S. 2279, and in view of the national interest in maximizing development of domestic oil and gas reserves, the Congress may wish to give special consideration to this case.

This Department has no position as to the advisability of special legislative relief in the light of the adverse position taken by the administration since 1970 on cases of this nature, and on similar bills before the Congress, and the strict language of the law.

Might I mention that I know of only one bill involving similar facts to the one under consideration where the administration did not object to enactment of relief legislation.

In that case, the lessee believed he had achieved a well capable of producing oil or gas in paying quantities on the anniversary date of the lease.

If that were the fact, the rental was no longer required. His belief was based on the fact that he had already penetrated a geologic formation containing oil prior to the termination date.

Because he had indication of a second find at a lower depth, he continued drilling rather than capping his well off.

The second find was made and the double well capped off within a few weeks of the termination date.

Thus, a majority of the expenditure was made before the lease had terminated.

That private law allowed consideration of a petition for reinstatement. And a petition was filed and a finding was made that the criteria of section 31 had been met. The lease was reinstated.

Now, the difference between that case and the present case is that this drilling took place after the termination of the lease.

I think that fairly well summarizes my statement, Senator. If there are any questions, I would be glad to answer them.

Senator FORD. Thank you very much, Mr. Hastey.

[The prepared statement of Mr. Hastey follows:]

AUG 5 1980

STATEMENT OF EDWARD L. HASTEY, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 2279, A BILL "TO AUTHORIZE AND DIRECT THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE NEW MEXICO 33955."

I appreciate the opportunity to appear before you today to present the Department's views on S. 2279.

S. 2279 would direct the Secretary of the Interior to receive, consider and act upon any petition for the reinstatement of a terminated oil and gas lease filed by the lessee of record, David Fasken, within 90 days after the effective day of the bill.

We can not support enactment of S. 2279 because, while the facts may be somewhat unique, taken in their entirety they do not reveal any of the special circumstances which we may in the past have considered appropriate in an individual case to warrant either special legislative relief or a waiver of a provision of the current law regarding termination of mineral leases.

The facts of this case are described in detail in the Department's report. I will summarize them briefly. A lease covering 1,280 acres was issued in 1978, with an annual rental of $1.00 per acre. In January 1979, part of the lease area was included in a Known Geologic Structure and as a result, the annual rental was changed to $2.00 per acre. The lessee was notified of the increased rental. In May of 1979 the lease was assigned to David Fasken. A notice of payment due was sent to Mr. Fasken showing the rental due by September 1, 1979, as $2,560. On August 10, 1979, this notice of payment due was received by our New Mexico State Office with a payment of $1,280 made as the annual

rental. On August 23, 1979, a receipt for this payment was sent to Mr. Fasken. The receipt showed that the amount due was $2,560 and the amount paid was $1,280. The receipt also carried the notation "UNDER PAYMENT OF $1,280.00 UNLESS OTHER ACTION IS PENDING OR THE BALANCE DUE IS PAID BY THE DUE DATE THIS LEASE MAY BE TERMINATED." Mr. Fasken's attorney has stated that the receipt the lessee received carried only that part of the notation that reads "UNDER PAYMENT OF $1,280.00 UNLESS OTHER ACTION IS PENDING OR THE BALANCE." However, even if that were the fact, the notice he received did clearly show the amount due and the amount received.

The balance of $1,280 was not received until over 3 months after the lease had terminated by operation of law. There is no explanation for this failure to comply with the requirements of the law. As a matter of fact, lessee acknowledged receipt of the notice of the change in the amount of the rental prior to the time the payment of rental was due. His attorney has stated he is unable to account for why their normal procedures were not followed and the rental check prepared from the lease abstract, which showed the rental payment due as $2,560 annually.

The law on this matter is very clear. Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law . . .". It further provides that where a lease has been terminated automatically by operation of law, but rental was paid or tendered within 20 days after the anniversary date and it is shown to the satisfaction of the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met.

Under the law, the Secretary has no authority to reinstate a lease which has automatically terminated unless the rental is tendered within 20 days of the due date.

This case may be somewhat unique and perhaps different from other leases terminated for failure to make timely payment because an extensive drilling program was conducted after September 4, 1979, although the lease had terminated by operation of law. On November 13, 1979, the lessee completed exploration with an oil well into a formation at approximately 10,288 feet, and a potential for 163 barrels of oil and 187 MCF of gas per day. He has stated that the expenditure for the exploration was over $1.8 million.

There have been thousands of leases terminated for failure to make timely payment. I can recall at least one case in Oklahoma which was handled by BLM's New Mexico office, which is similar to this one. In the Oklahoma case both substantial investment was made and a well was completed after termination of the lease. However, in that case the lease was reoffered under competitive bidding procedures. The original lessee was not the high bidder and had to repurchase the lease from the successful bidder at a cost of about $4 million. No legislative relief was sought.

Because, in the case that is the basis for S. 2279, only half the payment had been made, the New Mexico office issued a decision on December 20, 1979, that the lease had terminated by operation of law on September 4, 1979. The decision has been appealed to the Interior Board of Land Appeals. A decision is expected shortly.

If this legislation were to be enacted and the Secretary were to consider a petition for reinstatement, the bases for granting it would be those presently provided in the law - that is, failure to pay timely was either justifiable or not due to a lack of reasonable diligence.

Were this bill to be enacted before the IBLA renders its decision so that BLM would be required to process an application for reinstatement, there is serious question whether the beneficiary of the bill has met or could meet the criteria for reinstatement that are specified in the law.

The beneficiary of the bill was given ample notice that the rental payment had increased. He acknowledged to the IBLA that he has no explanation as to why the total rental payment was not made at the time the partial payment was made. He waited more than three months after the due date to tender the payment of the balance due which amounted to one-half of the total rental. To enact this legislation would give the beneficiary of the bill a false hope that relief would be granted and the lease reinstated.

If S. 2279 is to provide true relief, it must be amended either to modify the criteria by which the Secretary may review a Petition for Reinstatement or to actually reinstate the lease in question by legislative action. The Administration does not recommend either of these actions. However, because of the size of the investment and the discovery made in the case covered by S. 2279, and in view of the national interest in maximizing development of domestic oil and gas reserves, the Congress may wish to give special

consideration to this case. This Department has no position as to the advisability of special legislative relief in the light of the adverse position taken by the Administration since 1970 on cases of this nature, and on similar bills before the Congress, and the strict language of the law.

I know of only one bill involving facts similar to the one under consideration where the Administration did not object to enactment of relief legislation. In that case the lessee believed he had achieved a well capable of producing oil or gas in paying quantities on the anniversary date of the lease. If that were the fact, the rental was no longer required. His belief was based on the fact that he had already penetrated a geologic formation containing oil prior to the termination date. Because he had indication of a second find at a lower depth, he continued drilling rather than capping his well off. The second find was made and the double well capped off within a few weeks of the termination date. Thus, a majority of the expenditure was made before the lease had terminated. That private law allowed consideration of a petition for reinstatement. A petition was filed and a finding was made that the criteria of section 31 of the Mineral Leasing Act had been met. The lease was reinstated.

In the current case, although drilling had begun before September 4, 1979, the majority of the drilling expenditure occurred after the termination date. There is nothing in the material supplied to IBLA or the Department to indicate that lessee believed that a producing well had been achieved.

Rather, he acknowledged that the annual rental was due. He merely paid the wrong amount. While the results in this case may appear harsh, as the law is now written, the Secretary does not have the authority to waive its requirements.

We do believe that if the Congress feels that the pertinent provisions of law should be changed, the statute should be of general applicability to all persons in a similar situation and not modified just for one individual.

I have one technical comment. There is an inconsistency between the caption and the text of the bill. Although the caption states that it would direct the Secretary to reinstate the lease, the bill would only direct that the Secretary receive and consider a petition for reinstatement.

This concludes my prepared statement. I will be happy to answer any questions.

Senator FORD. I only have a couple of questions. I have tried to familiarize myself with the facts and look at what the House has done with similar legislation.

I am not sure—I am a little bit confused about your statement. On the first page, you state that the Department cannot support enactment of the bill, but then you just read from page 4 of your statement that, and I quote, "Because of the size of the investment and discovery made and in view of the national interest in maximizing * * * that Congress may wish to give special consideration in this case."

What is the position of the Department? You would not be unhappy if we went ahead and directed you to do it, is that what you are trying to say to us?

Mr. HASTEY. That is what we are trying to say. We are not coming out with strong support or strong opposition to the bill.

We think this one perhaps is unique. The problem we have had in arriving at a position on it is that we have had so many cases—probably in the neighborhood of thousands of them over the years—that were trying to treat everybody alike, and that the burden of making these payments on a timely basis rest with the lessee.

It was not until probably the latter part of May that we decided to soften our position on this bill because, in fact, this individual had invested a considerable amount of money and he had found producing quantities of both oil and gas.

Senator FORD. Well, if this legislation passed, it would not be something new. You have had them before, I understand, similar relief legislation.

Mr. HASTEY. The one I described is the only other one I know of that is similar to that. The major difference there was the fact that—I believe it was in 1970—that person had actually drilled and developed prior to termination, and the reason why he didn't make the rental payments is that he thought he satisfied the requirements of the law, that he had a well capable of producing oil or gas in paying quantities.

He did not satisfy that because he did not cap the well, and the relief legislation was passed.

Senator FORD. I understand, in 1968, there was a case and then in 1976 you had another case.

Mr. HASTEY. 1976 was the one I was describing.

Senator FORD. OK. We're on the same—you said 1970, and I thought we may have had a third case here.

Mr. HASTEY. I'm sorry. I just had my dates mixed up.

Senator FORD. We have a vote on, and that will slow us up just a little bit.

Let me just ask very quickly, then, in cases where the BLM receives only a part payment, as we have here I guess of the royalties or bonus due under a lease, what is the ordinary procedure utilized to notify the lessee of the deficiency?

Mr. HASTEY. We normally send a courtesy response to the lessee saying that he did not make adequate payment and so much is due.

Now, that is a courtesy billing. There is no requirement by law that we have to send that to him.

I might point out that we have something like 117,000 oil and gas leases and probably roughly 75 percent of those expire without any drilling.

The workload is enormous for us to continually remind these people that their bills are due or that their payment is inadequate.

So, we have left the burden of responsibility on the lessee to make sure that his payment is timely and adequate.

Senator FORD. It is my understanding from the information that I have that a receipt of the payment showed that the amount paid was sent to the lessee with the notation "Under payment of $1,280 unless other action is pending or the balance due is paid by the due date, this lease may be terminated."

Does that mean that you had the option, then, not to terminate it?

Mr. HASTEY. We don't terminate the lease. It terminates by operation of law. There are 3 situations in which the lease does not terminate automatically even if the full amount due is not paid. That is why we say "may be". In addition, if he came forward within the 20-day period—in other words, if he misses the due date of making his full payment, and the lease terminates he still has a 20-day window there that he can make full payment.

If he makes full payment in the 20 days we can accept that and if it is determined that the failure to pay on time was either justified or not caused by a lack of due dilligence in making that payment we can reinstate the lease.

So, we leave that "may" in there because there may be some extenuating circumstances so that the lease does not terminate or may be reinstated.

Senator FORD. So, then, you are saying to me that there are circumstances that would allow you to reconsider under the present law?

Mr. HASTEY. Yes; the law was amended some years back to allow the 20-day window after the anniversary date to allow us to use some discretion and to reinstate even though there is a late payment up to 20 days.

Senator FORD. I have no further questions.

Senator Domenici, do you have anything further?

Senator DOMENICI. Mr. Chairman, I have a statement of Don M. Fedric, counsel for Fasken. It details their position. I would ask that it be made part of the record.

Senator FORD. Without objection, it will be made a part of the record.

[The prepared statement of Mr. Fedric follows:]

STATEMENT OF DON M. FEDRIC

BEFORE THE

SUBCOMMITTEE ON ENERGY RESOURCES

AND MATERIALS PRODUCTION

OF THE

SENATE COMMITTEE ON ENERGY

AND NATURAL RESOURCES

AUGUST 5, 1980

Introduction

Mr. Chairman and members of the Subcommittee on Energy Resources and Materials Production, my name is Don M. Fedric. I am an attorney from Roswell, New Mexico, and I am submitting testimony today on behalf of David Fasken to urge passage of S. 2279.

S. 2279[1/] is a private bill which would authorize and would direct the Secretary of the Interior ("Secretary") to receive, to consider and to act upon a request from Mr. David Fasken to reinstate federal Oil and Gas Lease Number New Mexico 33955. The bill does not require the expenditure of federal funds, does not change existing law, and does not mandate specific affirmative administrative action.[2/] S. 2279 merely provides the Secretary with the discretionary authority (1) to take equitable action; (2) to act in accordance with the Department of the Interior's ("Interior") own precedent, and (3) to avoid economic and natural resource waste. S. 2279 would be in the public interest and would provide the Secretary with the opportunity to alleviate the harsh economic consequences of

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1/ A copy of S. 2279 is attached as Appendix A.

2/ In its present form, S. 2279 does not require specific administrative action; however, a companion House bill, H.R. 6538, as amended, does mandate the Secretary to reinstate the lease. See, infra, at 7.

a lapsed federal lease on Mr. Fasken and on the other independent producers in the lease project.

Background

Oil and Gas Lease NM 33955 was issued by the United States to Peggy E. Baetz, effective September 1, 1978. By assignment effective April 10, 1979, the lease was conveyed to David Fasken. The lease covered all of Sections 22 and 23, in Township 20 South, Range 32 East, Lea County, New Mexico, and contained 1,280 acres. The first year's lease rental of $1.00 per acre ($1,280.00) was paid to the New Mexico Office of the Bureau of Land Management ("BLM") prior to issuance of the lease. A portion of the lands within the lease subsequently was declared to be within the boundaries of a known geologic structure, which declaration, by operation of law, caused annual lease rentals to increase from $1 per acre ($1,280) to $2 per acre ($2,560), payable on or before September 1, 1979.

On August 6, 1979, Mr. Fasken paid the rental for the lease rental year commencing September 1, 1979; however, he mistakenly paid the original rental amount of $1,280 rather than the increased rental of $2,560. On December 17, 1979, Mr. Fasken's office discovered the deficiency in the rental payment and immediately tendered the additional $1,280 to BLM. BLM refused the tender because it regarded the lease as having terminated by operation of law pursuant to 30 U.S.C. § 188(b).

Section 31 of the Mineral Leasing Act[3/] provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease for any lease in which there is no well capable of producing oil or gas in paying quantities, the lease shall terminate automatically. In the present situation, the Secretary has no discretion to reinstate the lease. Consequently, Congressional authorization is necessary in order for the Secretary to grant Mr. Fasken's request for reinstatement.

In justification of the failure to pay the total increased rental when due, Mr. Fasken believes he acted entirely in good faith in connection with this matter. Failure to pay the full amount was due to an unintentional clerical error which does not warrant the severe penalty of lease termination. Mr. Fasken did make a rental payment prior to the due date, and the amount paid was the exact amount called for in the lease. The BLM did not provide Mr. Fasken with specific notice of deficiency. The BLM receipt of August 23, 1979, sent to Mr. Fasken for rental payment contained only the following partial notation: "Under payment of $1,280 unless other action is pending or the balance". Such language did not put Mr. Fasken on notice that his original payment was deficient. Mr. Fasken obviously desired to retain the lease in good standing, evidenced by a substantial drilling expenditure occurring before and after the rental due date.

3/ 30 U.S.C. 188(b).

Clearly, he did not intend to loose the lease for failure to pay the nominal, full rental.

On August 3, 1979, approximately one month before the rental due date, David Fasken commenced the drilling of a well in Section 23 on the Baetz lease and drilled the well to the Morrow formation at approximately 13,640 feet subsurface. The Morrow formation was found to be nonproductive, and the well was plugged back and completed from perforations in the Bone Spring formation at approximately 10,288 feet. The well was producing and had potential of 163 barrels of oil and 187 Mcf of natural gas per day on November 13, 1979. Currently, the well is shut-in as a result of the lease having lapsed. Prior to and during the period of drilling from early August to the middle of November, 1979, both the United States Geological Survey and BLM were made aware of Mr. Fasken's drilling operations as a result of reports filed by him.

Through 1980, Mr. Fasken and other individuals participating with him in drilling of the well have expended the sum of $1,442,685.48 in drilling and completing the well. Total project expenditure to date, including lease acquisition expense and drilling expense, is $1,850,685.48.

Equity and reasonable fair play are meritorious factors in this matter. Mr. Fasken and the other investors in the well on this lease are small, independent participants in the oil and gas industry. They contribute in a very active fashion to searching

for new oil and gas sources for our nation. Loss of this lease and the significant investment they have made in developing a producing oil and gas well would be a severe and material blow to these individuals.

Legislation such as S. 2279 is not without precedent. Previous legislation of this nature involved factual situations where no rental whatsoever had been paid when due, and where well drilling activity investment on the terminated leases was far less than in the present situation.

In 1967, Senator Clinton P. Anderson introduced S. 823 4/ in the Senate for the relief of Elwyn C. Hale. The bill sought to reinstate a New Mexico federal oil and gas lease which had been terminated by operation of law because a rental was not paid on time. In the Hale situation, a secretary to Mr. Hale failed to pay a rental fee when due. Mr. Hale had begun drilling a well upon the lands involved, but the well had not been completed. Apparently, there had been no signs of oil or gas. The well had been drilled to a depth of approximately 500 feet at a cost to Mr. Hale of only $9,000. The bill was passed in July, 1968, and signed by the President. In the Secretary's subsequent decision of lease reinstatement, it was determined that the lessee had acted in good faith and not without a lack of reasonable diligence.

4/ The language used in S.823 is identical to that used in S. 2279.

On July 30, 1975, Senators Montoya and Domenici introduced S. 2220[5/] for the relief of Sol West for rein tatement of a terminated New Mexico oil and gas lease where rentals had not been paid on a timely basis. A similar bill was introduced in the House of Representatives by Representatives Runnels and Lujan. In that matter, rentals were due and payable on or before May 1, 1975, but were not paid. In the West matter, lease acquisition costs were approximately $20,000, and drilling costs were approximately $920,000. In a report from Jack Horton, Assistant Secretary of the Interior, to the Honorable Henry M. Jackson, Chairman, Senate Committee on Interior and Insular Affairs, Interior reviewed the bill in detail and advised the Committee that Interior did not object to its enactment.[6/] This private bill was passed in Congress on September 21, 1976, and signed into law by the President on October 4, 1976. A petition for reinstatement subsequently was filed with the Secretary of the Interior, and the lease was reinstated.

Current Status

Presently, S. 2279 is awaiting action before the Senate Subcommittee on Energy Resources and Materials Production. On

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5/ The language used in S. 2220 is identical to that used in S. 2279.

6/ A copy of the Senate Committee on Interior and Insular Affairs Report on S. 2220 is attached to this testimony as Appendix B.

July 2, 1980, the House Committee on Interior and Insular Affairs voted approval of H.R. 6538, a companion bill to S. 2279. Based on a report from the Interior Department, the House Committee amended the bill as it was originally introduced in the House and the Senate to direct the Secretary to reinstate the lapsed lease upon filing of a petition for reinstatement by Mr. Fasken.[7/] I urge the Subcommittee on Energy Resources and Materials Production to amend S. 2279 so that it will conform with H.R. 6538. In its amended form, the legislation would streamline the procedure by which the lease could be reinstated.

Conclusion

Reinstatement of the Baetz lease is the most economic, efficient, and equitable option available. If Congress authorizes the Secretary of the Interior to reinstate the lease, production can be resumed from the well virtually immediately. This would provide the American people with an additional supply of natural gas and oil and would allow the small, independent investors in this particular producing well to begin to obtain a return on their investments and would stimulate further exploration by them.

7/ H.R. 6538, in its amended form, is attached as Appendix C.

APPENDIX A

96TH CONGRESS
2D SESSION

S. 2279

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 3), 1980

Mr. DOMENICI (for himself and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to receive, consider, and act upon any petition of David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, for reinstatement of said lease filed within ninety days after the effective day of this Act, together with the

required rental, if any, including back rental accruing from the date of the termination of the lease.

APPENDIX B

Calendar No. 457

94TH CONGRESS *1st Session*	SENATE		REPORT No. 94-470

OIL AND GAS LEASE NEW MEXICO 18302

NOVEMBER 20 (legislative day, NOVEMBER 18), 1975.—Ordered to be printed

Mr. METCALF, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 2220]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 2220) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of S. 2220 is to authorize and direct the Secretary of the Interior to consider a petition for reinstatement of oil and gas lease New Mexico 18302, if such petition is filed within 90 days of the effective date of this Act together with rental including back rental accrued since the lease termination date.

II. BACKGROUND AND NEED

Oil and gas lease New Mexico 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973, and by instrument of assignment effective May 1, 1973, was conveyed to Sol West, III. The land covered is within the known geologic structure of a producing oil and gas and thus was leased competitively.

Mr. West failed to pay timely the rental due on the anniversary date, May 1, 1975, and thus the lease terminated by operation of law. On July 17, 1975, a petition for reinstatement of the lease was filed with the Bureau of Land Management in the New Mexico State Office, together with a check for $880 to cover the rental payment for the period May 1, 1975, to May 1, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the

anniversary date, but that there was no well capable of production in existence on May 1, 1975.

The Mineral Leasing Act of 1920 provides in section 31 that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *" (30 U.S.C. 188(b)). It further provides that where any lease has been so terminated, but rental was paid or tendered within 20 days after the anniversary date, and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188(c)). In this case since the rental was not tendered within 20 days, the Secretary has no discretion to reinstate the lease.

A decision was rendered by the New Mexico State Office on August 4, denying the petition. That decision has been appealed to the Board of Land Appeals of the Department of the Interior and the case is pending before the Board. Due to this pending legislation, action on the appeal has been suspended.

The lessee has spent $925,000 to develop a productive oil and gas well. According to the testimony of the lessee, failure to make timely payment was the result of his assumption that the well was capable of producing in paying quantities, which would have precluded rental payments under provisions of Section 31 of the Mineral Leasing Act. Testimony at the hearings indicated that the well tested at 41 barrels per hour at the time it was decided to continue drilling to a deeper formation. Mr. West indicated that the well represents an important cash flow source to his firm, loss of which could severely hamper the firm's operations.

III. Legislative History

Open public hearings were held on the bill on October 7, 1975. The witness for the Department of the Interior testified that the Administration would have no objection to passage of the bill. No opposition was heard.

IV. Committee Recommendation

The Committee on Interior and Insular Affairs, in open business meeting, on November 20, 1975, by unanimous vote of a quorum present, recommended that the Senate adopt S. 2220 without amendment.

V. Cost

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 the committee provides the following estimates of cost:

No additional Federal expenditures are involved in the enactment of S. 2220.

VI. Executive Communication

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., October 6, 1975.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the opinion of the Department with respect to a bill, S. 2220, "To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302."

We have reviewed the proposed bill and we do not object to its enactment.

S. 2220 would direct the Secretary of the Interior to receive, consider, and act on the petition of Sol West III. for reinstatement of oil and gas lease New Mexico 18302 if a petition is filed within 90 days of the effective date of this proposed legislation together with rental including back rental accrued since the lease termination date.

Oil and gas lease NM 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973. By instrument of assignment executed April 9, 1973, and approved effective May 1, 1973, the lease was conveyed to Sol West, III. The land covered is in a KGS and must be leased competitively.

The record shows that Mr. West failed to timely remit the rental due on the anniversary date, May 1, 1975, and that the lease terminated by operation of law (30 U.S.C. 188(b)). On July 17, 1975, George H. Tanker, Jr., Attorney, filed on behalf of the lessee a petition for reinstatement of the lease with the BLM State Office. The petition was accompanied by a check in the amount of $80.00 to cover the rental payment for the period May 1, 1975 to May 2, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the anniversary date, but that there was no well capable of production on May 1, 1975.

Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *" (30 U.S.C. 188(b)). It further provides that where any lease has been so terminated, but rental was paid or tendered within twenty days after the anniversary date and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188 (c)). In this case since the rental was not tendered within 20 days, the Secretary has no discretion to reinstate the lease.

Thus a decision was rendered by our State Office on August 4 denying the petition. That decision has been appealed to the Interior Board of Land Appeals and the case is pending now before the Board.

Although at the time of the anniversary date of the lease [illegible] no well capable of producing oil or gas in paying quantities [illegible] well was completed not long thereafter, in early May of 1975, [illegible] another well was near completion in July.

Substantial work has been done on the leasehold as early as June 1975, and a letter from Senator Montoya to Senator Metcalf, dated August 1, indicates that a substantial commitment of $[illegible] has been made to develop the lease and that the lease was productive. The letter further indicates that the wells represent an important cash source to the firm of Mr. West, and loss of the wells could severely hamper the firm's operations.

In most cases of termination of a lease for failure to pay rental, there has been little or no development or financial commitment to the lease. This case is atypical in that regard.

The reasons for the failure to make timely payment of rent are not clear. It is known that Mr. West was out of the country at the time the rental was due. It has been suggested by his representative that he may have attempted to make a payment, which was subsequently misplaced in the mails or elsewhere or that he assumed that productive activity on the lease assured that it would be continued.

It is our view that the bill as written would not require the Secretary to reinstate the lease, but rather would require the Secretary to consider and act on appropriate petition, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination. The 20-day time period is a statutory requirement that we are bound to observe regardless of the circumstances, in the absence of remedial legislation. The Department feels that Section 31 of the Mineral Leasing Act is explicit and is a clear expression of legislative purpose. S. 2220 would not guarantee reinstatement. It would authorize the Secretary to reinstate the lease if it is shown upon further inquiry into the facts of this case that failure to submit the rental on time was either justifiable or not due to lack of reasonable diligence.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

VII. CHANGES IN EXISTING LAW

S. 2220 will not change existing law.

APPENDIX C

96TH CONGRESS
2D SESSION

H. R. 6538

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1980

Mr. RUNNELS introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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A BILL

To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to, ~~receive, consider, and act~~ upon ~~any~~ petition ~~of~~ by David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, ~~for~~ reinstatement ~~of~~ said lease (in the petition is) filed within ninety days after the effective date of this Act, together with the

required rental, if any, including back rental accruing from the date of the termination of the lease.

Senator DOMENICI. I have no further questions. I think we have, as far as the full committee, we have to decide whether we want to make this bill comport with the House bill or whether we would leave it as introduced.

I think we can take that up before we present it to a quorum.

Senator FORD. In all probability, we will be taking this up some time after our recess in the latter part of August, the 1st of September.

I understand both sides here I think, and I can understand your position very well. And I think you have got yourself in the right posture, and that is unusual, sometimes, for those in departments. So, I appreciate that.

I have no further questions. Senator Domenici has no further questions. And I appreciate your coming today. Sorry we were late in getting to you to have an opportunity to visit. There may be even more but, with the vote, that just kind of moves it out of here.

Thank you very much for your patience.

Mr. HASTEY. Thank you.

Senator FORD. The hearing is adjourned.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

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